Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	IB Docket No. 00-248
Streamlining and Other Revisions of	)	
Part 25 of the Commission's Rules	)	
Governing the Licensing of, and	)	
Spectrum Usage by, Satellite Network	)	
Earth Stations and Space Stations	)	
	)	

COMMENTS OF TIME WARNER INC.

Time Warner Inc. ("Time Warner"), through its attorneys, submits these comments in response to the *Third Further Notice of Proposed Rulemaking* ("*Third FNPRM*") issued in the Federal Communications Commission's ("FCC's" or "Commission's") proceeding to streamline its satellite application processing rules.[1/] Time Warner's comments are limited to the Commission's proposal to prohibit the use of C-band and Ku-band Fixed Satellite Services ("FSS") satellites for analog video transmissions following a one-year transition period.[2/] This proposed sunset: (1) would cause significant economic harm and massive disruption for those cable program networks and cable operators that continue to rely on analog satellite transmissions to distribute programming to thousands of headend reception points nationwide; (2) is unnecessary given the transition to digital already happening in the marketplace, and (3) is not supported by evidence of technical interference.

1/ 2000 Biennial Regulatory Review Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Sixth Report and Order and Third Further Notice of Proposed Rulemaking*, 20 FCC Rcd 5593 (2005) ("*Third FNPRM*").

2/ *Id.* at 5624-25.

I. BACKGROUND

Time Warner is a leading global media and entertainment company with businesses in filmed entertainment, television networks, cable systems, interactive services, and publishing. Time Warner's interest in this proceeding stems from the operations of its divisions Home Box Office, Inc. ("HBO"), Turner Broadcasting System, Inc. ("TBS"), and Time Warner Cable, Inc. ("TWC").

HBO is a leading provider of premium television services whose offerings, including HBO and Cinemax, are viewed by approximately 39 million subscribers in the United States. HBO transmits 30 full-time program service feeds using eight C-band satellite transponders. Although HBO transmits many of its programming service feeds digitally, it currently utilizes analog transmission for the primary feeds of HBO East, HBO West, Cinemax East, and Cinemax West.

TBS is also a leading cable programmer whose networks include CNN, Headline News, TNT, TBS Superstation, Cartoon Network, Turner Classic Movies, CNN International, and CNN en Español. TBS programming is watched in over 90 million households in the United States and transmitted to more than 200 countries across the world. TBS uses eight domestic C-band transponders to transmit 19 full-time feeds; five of those transponders use analog technology.

TWC is the second largest cable operator in the U.S., with cable systems serving 10.9 million subscribers in 27 states. TWC's systems are among the most technologically advanced in the country, currently serving more than 4.9 million digital subscribers. TWC operates approximately 179 headend facilities around the country where programming signals are received from satellites and redistributed over its cable network.

II. DISCUSSION

As explained in greater detail below, the Commission's proposed sunset for analog video satellite transmissions would cause significant economic harm and massive disruption for cable programmers and operators. This proposal is unnecessary given the ongoing transition to digital satellite transmissions already underway in the industry, and is unsupported by the underlying record in the proceeding.

A. The Proposed One Year Sunset Would Cause Significant Economic Harm and Massive Disruption

In order to evaluate the magnitude of the cost and operational implications of the Commission's proposal, HBO, TBS, and TWC have gathered data from industry sources, internal surveys, and conversations with the major satellite transmission and reception equipment suppliers to the cable television industry. Although the data does not lend itself to precise estimates of the costs and difficulties of implementing the Commission's proposal, it provides a sense of the challenges that would be faced.

Based on our research, Time Warner estimates that there are approximately 74 cable television program feeds still being transmitted by satellite in analog. These feeds are received at approximately 10,000 cable television and SMATV headend facilities nationwide through an estimated 200,000 analog video satellite decoders. Based on information from equipment manufacturers, these analog decoders are being retired at a rate averaging about 27,000 per year as cable headends increasingly employ digital technology and receive the digital feeds offered by many program networks. Assuming for the purposes of discussion that the Commission adopted its proposed analog video sunset in the third quarter of 2006, there would still be an estimated 173,000 analog decoders in the field if the current annual rate of replacement were maintained.

Time Warner estimates that the cost to the industry to replace these units would range from $130 million to $150 million.

The nature of the conversion would certainly be massive, and it is highly doubtful it could occur within the Commission's anticipated timetable. Equipment manufacturers have indicated that it would take approximately 15-18 months for the initial manufacturing, affiliate communications, order processing, and shipping of the equipment that would be required to make the conversion. In addition, equipment vendors would need sufficient lead time to hire and train the supplemental staff needed to support the communications and rollout of such unprecedented magnitude within a compressed timeframe. Adequate time would also be needed for the installation, testing and authorization of the equipment once it arrived at cable operator headends.

Other adverse consequences would result from the accelerated transition proposed by the Commission. To comply with a one-year sunset, programmers and cable operators would be forced to absorb a significant capital cost within a short period of time by replacing their analog equipment with the digital models currently in the market. The net effect of such a widespread deployment of equipment at one time would be to inhibit for the foreseeable future the adoption by industry of new, advanced technologies currently under development. This type of "flash cut" conversion would effectively lock programmers and cable operators into existing technology for the usable life of that equipment. As such, they would be foreclosed for many years from converting to the types of feature-rich digital equipment currently in development, including devices that incorporate Advanced Video Coding ("AVC") technologies like H.264 or VC-1. Furthermore, to the extent vendors would be forced to manufacture large quantities of existing models of equipment, they would likely defer development and marketing of more

advanced models. Under a market-driven conversion, however, programmers and cable operators would be able to gradually replace their analog equipment with digital equipment featuring increasingly advanced functionality. This approach would also serve as an incentive to equipment manufacturers to continue development of advanced digital equipment.

B. A Sunset Is Unnecessary Given The Transition Already Occurring In The Marketplace

The transition from analog to digital satellite video transmissions is already being driven by the marketplace, making an FCC-imposed sunset unnecessary. Most programmers have discontinued the number of analog satellite video feeds in use over the past several years, and transmit newly-launched networks only in digital format. Cable operators are also migrating to digital satellite feeds at a rapid rate and, at some point, the number of cable operators relying on analog feeds will fall to a level where programmers will be able to discontinue their use. As observed by the Commission in the *Third FNPRM*,[3/] the number of analog satellite feeds in use is declining, demonstrating that the transition to digital is occurring in the absence of government intervention.

Simply put, cable operators and programmers are migrating voluntarily to digital technology to take advantage of its higher quality, improved robustness, and spectrum efficiency. As such, the best approach is for the Commission to allow the marketplace to drive the transition to its natural conclusion. Recognizing that the Commission has an interest in maximizing spectrum efficiency, it may wish to monitor the marketplace to ensure the transition proceeds in a timely manner. If the Commission determines at some future date that a mandatory prohibition on analog video satellite transmissions is necessary – whether to complete the transition or should a technical problem emerge – sufficient time must be allowed so that programmers,

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3/ *Id.* at 5625.

operators, and equipment manufacturers can plan accordingly. In determining the appropriate time frame for any future sunset, the Commission should evaluate and take into account the status of the transition and the prevailing market conditions at that time.

C. An Immediate Sunset Is Not Supported By Evidence of Technical Interference

The record in this proceeding fails to demonstrate a compelling reason why an immediate one year sunset on analog video transmissions will benefit the public interest. Although the Commission bases its proposal in part on an observation that "analog video transmissions are more susceptible to harmful interference from other transmissions and more likely to cause harmful interference to other transmissions,"[4/] the record provides no specific evidence of substantial technical interference. Indeed, the industry track record over the past 30 years reflects that video programmers work well with satellite operators to prevent problems before they arise.[5/] Absent a showing that there has actually been or will be substantial interference problems involving analog video satellite transmissions, a prohibition on such transmissions in the near term is unwarranted and will not serve the Commission's goal of maximizing spectrum efficiency.

[4/] *Id.*

[5/] There have been rare instances of intentional interference, such as that involving an individual known as "Captain Midnight" who interfered with HBO's signal in 1986. Such cases are the exception and have, in each case, been quickly resolved.

III. CONCLUSION

In light of the forgoing, the most prudent course for the Commission to follow is to monitor the industry-driven conversion to digital video satellite transmissions and to revisit the issue in the future if interference concerns arise or other public interest reasons compel a regulatory mandate to complete the transition. Consequently, Time Warner urges the Commission not to adopt its proposed sunset of analog video transmissions.

Respectfully submitted,

TIME WARNER INC.

/s/

Benjamin J. Griffin
Christopher R. Bjornson
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 434-7300

Attorneys for Time Warner Inc.

Of Counsel:

Steven N. Teplitz
Susan A. Mort
Time Warner Inc.
800 Connecticut Avenue, NW
Washington, DC 20006

Dated: September 6, 2005